

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3109 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

FEBIBEN JAMES EMANUEL

Versus

NADIAD MUNICIPALITY & ORS.

Appearance:

None present for Petitioner
Mr. Y.B. Shah for Respondent No.1 & 2
None present for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:10/10/96

C.A.V. JUDGMENT

Heard Shri Y.B. Shah, learned counsel for respondents No.1 and 2 and perused the Special Civil Application. The petitioner has made two fold prayer in this petition. First prayer has been made that the respondents may be directed to calculate the amount of pension to which the petitioner is entitled under the Rules with effect from 1.7.82 and to pay her arrears.

Second prayer has been made that the respondents may be directed to fix the pay of the petitioner in the revised pay scale with effect from 1.1.73 and to pay her the arrears till age of retirement.

2. It is not in dispute that the petitioner has retired from services of the respondent No.1 from 1.7.82. The petitioner was initially appointed as a teacher from 1.7.50 in the Balmandir owned and run by Fulchand Smarak Samiti, a registered public trust. Under the Resolution No.134 dated 15.6.70, of Nadiad Nagar Palika, the Balmandir with all its existing assets and liabilities including its staff was taken over by the Primary Education Committee of Nadiad Municipality. All the immovable and moveable properties of the trust have also been brought under administrative control of Nadiad Nagar Palika with effect from 15.6.70 as per subsequent Resolution made. The petitioner has come up with the case that she became servant of Nadiad Nagar Palika since 1.7.50.

3. Reply has been filed by respondents No.1 and 2. The learned counsel for the respondents contended that the services of the petitioner were terminated by the trust with effect from 15th June 1970. Subsequently the staff of Balmandir was taken, under the directions of the Director of Municipalities by Nadiad Municipality on provisional basis for one year. The respondents' counsel contended that the services of the petitioner cannot be counted for pension and other retirementary benefits from 1.5.50. The services of the petitioner for pension and other retirementary benefits could have been counted only from 1.8.70, the day on which she has joined Nadiad Municipality services. The learned counsel for the respondents further contended that the past services of the petitioner which she rendered with the trust cannot be counted for any purpose whatsoever and no liability whatsoever can be fastened on Nadiad Municipality. Reliance in this respect has been placed on the decision of Supreme Court in the case of State of Punjab v. Dev Dutt Kaushal Etc.Etc., reported in JT 1995(6) SC 225. So far as the claim of the petitioner regarding benefit of revision of pay scale is concerned, the learned counsel for the respondents contended that the petitioner was an untrained teacher and as such, she has been given a lumpsum amount of Rs.50.- p.m. plus D.A. It has further been stated that the revised pay scale has been adopted by the Nagar Palika in the year 1981 and the petitioner cannot be given any benefit of revision of pay scale from 1.1.73. At the most, she can claim benefit of revision of pay scale from the date on which the revised pay

scales have been accepted by the Nagar Palika and the pay scale which has been prescribed for untrained teachers. Lastly, it has been contended that the petitioner has completed more than 10 years' service with Nadiad Municipality, but as she was not a permanent teacher, she is also not entitled for any pension.

4. I have given my thoughtful considerations to the submissions made by the learned counsel for the respondents.

5. Under the order made by this Court by way of interim relief, the respondent has been directed to determine the pension payable to the petitioner and it has been determined. This Court, under the order dated 30th April 1982, has directed the respondent to deposit, within a period of two weeks from the date of the order, Rs.4,000/- in a nationalized bank or any District Cooperative bank at Nadiad for a period of 39 months and the amount of interest accruing due on the said deposit monthly/quarterly will be payable to the petitioner directly. The petitioner can claim for benefit of revised pay scale only from the date on which the revised pay scales as recommended by Desai Pay Commission were adopted by Nadiad Municipality for its employees and not from 1.1.73. The learned counsel for the respondents has not produced on record any cogent and satisfactory evidence to prove and establish from which date the revised pay scales have been adopted by Nadiad Municipality for its employees. The learned counsel for the respondents has also not produced any record or material before this Court to show what pay scale has been prescribed for the teacher of a category to which the petitioner belong. The learned counsel for the respondent further failed to show what was the revised pay scale for the category to which petitioner belongs, i.e. for untrained teacher and also for trained teachers.

6. So far as the contention of the learned counsel for the respondents that the services of the petitioner earlier to the date on which she joined the services of Nadiad Municipality cannot be counted for the purpose of pension etc. is concerned, I find sufficient merits in this contention. This contention finds support from the decision of Supreme Court in the case of State of Punjab v. Dev Dutt Kaushal Etc.Etc.(Supra). The services which she rendered till the date she joined Nadiad Municipality cannot be taken into consideration for the purpose of fixation of her pension and other retirementary benefits. But I do not find any substance in the contention of the

learned counsel for the respondents that the petitioner was not a permanent employee of Nadiad Municipality though she has completed more than 10 years services and that she is not entitled for pension etc. This contention has no merits only on the ground that the respondent has not come up with the case that the petitioner was not eligible to be made permanent on the post on which she has been taken in the services by Nadiad Municipality. The respondents cannot be allowed to take benefit of their inaction or omission. The petitioner has worked with the respondent Nadiad Municipality for more than 10 years and in the meanwhile it is for the respondent to pass appropriate order of her confirmation or order making her permanent on the said post. It is also not case of the respondents that the petitioner's work was not satisfactory.

7. In the facts and circumstances of the case, interest of justice will be met in case this writ petition is disposed of with following directions:

The respondents shall pass appropriate order of confirmation or making the petitioner permanent on the post of teacher. The petitioner shall be given benefit of revised pay scale which has been accepted for untrained teachers with effect from the date on which revised pay scale has been given to all other employees. The arrears of fixation of revised pay scale of the petitioner shall be determined within a period of three months from the date of receipt of certified copy of this order and the payment thereof be made within two months thereafter. The petitioner shall be entitled for interest on the arrears at the rate of 12% p.a. from the date of filing of this Special Civil Application. Necessary order making the petitioner permanent shall also be made within a period of three months from the date of receipt of certified copy of this order. Necessary pension papers of the petitioner shall be prepared taking into consideration her qualification in service from the date she joined Nadiad Municipality and the papers may be sent to the concerned authority within a reasonable period, say one month from the date of preparation of pension papers. These papers shall be prepared within three months from the date of receipt of certified copy of this order. However, it is made clear that the petitioner shall cooperate the respondents in all respect in preparation of pension papers. The concerned authority, on receipt of these papers will give the pension to the petitioner within a period of three months next thereafter. The pension has to be determined on the basis of revised pay scale which has been given to

the petitioner. The arrears of pension may be given to the petitioner within a period of three months together with interest thereon at the rate of 12% p.a. from the date of filing of petition. Whatever amount is received by the petitioner by way of interest on the amount of Rs.4,000/- deposited by respondents in pursuance of the order of this Court shall be deducted from the aforesaid amount.

8. The arrangement which has been made by this Court under the order dated 30th April 1982 shall continue till the petitioner is given all the benefits as per directions of this Court aforesaid. The amount of Rs.4,000/- which has been deposited by respondent in a nationalized bank or Cooperative Bank at Nadiad in pursuance of interim order of this Court dated 30th April 1982, shall be taken by respondents No.1 and 2 after giving the petitioner all benefits in accordance with the directions given by this Court and not earlier to that. Rule is made absolute in aforesaid terms. The respondent No.1 is directed to pay Rs.1,000/- to the petitioner by way of costs of this petition.

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(sunil)